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MORRISON & FOERSTER LLP

SAN FRANCISCO
LOS ANGELES
SACRAMENTO
ORANGE COUNTY
PALO ALTO
WALNUT CREEK
DENVER

ATTORNEYS AT LAW

2000 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20006-1888
TELEPHONE (202) 887-1500
TELEFACSIMILE (202) 887-0763

NEW YORK
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EX PARTE OR LATE FILED

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November 14, 1997

Writer's Direct Dial Number
(202) 887-1510

Via Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M St., NW
Washington, D.C. 20554

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NOV 14 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **EX PARTE**
IB Docket No. 96-111

Dear Ms. Salas:

Representatives of ICO Global Communications ("ICO") met on November 13, 1997 with Ari Fitzgerald, legal advisor to Chairman William Kennard; David Siddall, legal advisor to Commissioner Susan Ness; Peter Tenhula, legal advisor to Commissioner Michael Powell; and Karen Gulick, legal advisor to Commissioner Gloria Tristani, to discuss ICO's comments filed in the above-captioned proceeding. ICO representatives at the meeting were Richard DalBello, vice president of government affairs, North America, and the undersigned. Loretta Dunn, vice president, trade and communications policy for Hughes Electronics Corporation, an ICO investor, also attended the meetings.

ICO restricted its discussion to the arguments presented in its comments filed in the above-captioned proceeding and in the attached presentation.

Two copies of this letter have been submitted to the Secretary of the Commission for inclusion in the public record, as required by Section 1.1206(b)(2) of the Commission's rules.

Very truly yours,

Cheryl A. Tritt
Counsel for ICO Global Communications

Attachment

dc-95754

No. of Copies rec'd 0+2

cc: Ari Fitzgerald
David Siddall
Peter Tenhula
Karen Gulick

ICO GLOBAL COMMUNICATIONS

DISCO II TALKING POINTS
(IB Docket No. 96-111)

1. **The Commission should adopt its proposal to create a presumption in favor of granting requests to serve the United States by non-U.S. satellites licensed/authorized by World Trade Organization ("WTO") member countries.**

   - The U.S. WTO commitment to unconditionally open the U.S. satellite services market, made as part of the February 1997 WTO Agreement on Basic Telecommunications Services ("WTO Agreement"), requires the FCC to allow satellite operators licensed/authorized by WTO member countries entry into the U.S. market.

   - Application of the ECO-Sat test to satellites licensed/authorized by WTO member countries would violate both the most favored nation and national treatment principles of the General Agreement on Trade in Services ("GATS"), by according more favorable treatment to countries that passed the ECO-Sat test than to other WTO members, and by according operators licensed/authorized by WTO member countries other than the United States less favorable treatment than U.S. licensed operators.

   - Any "competitive harm" test must require a showing of *very high risk* to competition in order to overcome the presumption that WTO member licensees' requests to serve the U.S. market will be granted. Specifically, consistent with U.S. antitrust principles, such requests should be denied only where the applicant has market power and likely will use that power to raise prices and limit output in the U.S. satellite market.

   - The scope of the proposed "public interest" inquiry must be strictly limited. Only national security and law enforcement concerns should overcome the presumption in favor of granting applications of satellite operators licensed/authorized by WTO member countries.

     -- The WTO Agreement requires that the United States resolve trades disputes through the WTO trade dispute mechanism, not the U.S. regulatory process.

2. **The Commission should not apply an ECO-Sat test to WTO member licensed/authorized satellite operators that propose to serve non-WTO member countries.**

   - If the Commission were to apply the ECO-Sat test to the non-WTO route markets served by a WTO member licensed/authorized satellite operator, it also must apply the test to the non-WTO route markets served by U.S. licensed satellite

operators, or it would violate the national treatment provisions of the WTO Agreement.

- A route-by-route approach is inappropriate for MSS because MSS systems are designed to be global in nature. An MSS system could conceivably serve more than 200 countries. It would be impractical to require a non-U.S. licensed/authorized MSS operator to make the requisite route-by-route showing for the more than 100 countries that are not a party to the WTO Agreement.

- To the extent that the Commission wishes to promote competition in countries that have not signed the WTO Agreement, it should do so by encouraging foreign administrations to apply a "no special concessions" condition to their authorized MSS operators similar to that applied by the Commission to U.S. licensed operators.

3. **The proposed treatment of future intergovernmental satellite organization ("IGO") affiliates is inapplicable to ICO.**

   - ICO is not an IGO affiliate. Although ICO had its origins as an Inmarsat project, ICO today is a private, commercial, market-driven entity that is constitutionally, managerially and operationally entirely separate from Inmarsat.

   - In any event, ICO is not a future IGO affiliate, having come into existence in 1995.

   - There is no reason to subject applications to serve the United States from ICO satellites to additional review not imposed on other WTO member licensed/authorized satellite operators. Such additional review will, at a minimum, result in delay, and could result in a denial of authorization to serve the United States through ICO satellites.

4. **The Commission should not require non-U.S. licensed/authorized satellite operators to provide information that duplicates information already provided to the operator's home government.**

   - Non-U.S. licensed/authorized satellite operators presumably already have provided to their authorizing administration much of the legal and financial information the Commission would require.

   - For the Commission also to require such information would be tantamount to re-licensing by the United States, which the Commission has said is not required by the public interest.

   - The Commission is justified in seeking certain technical information from non-U.S. licensed/authorized operators for international and domestic coordination purposes.